

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL)	MDL No. 146
INDUSTRY AVERAGE)	
WHOLESALE PRICE LITIGATION)	CIVIL ACTION: 01-CV-12257 PBS
)	
THIS DOCUMENT RELATES TO)	Judge Patti B. Saris
ALL CLASS ACTIONS)	Chief Magistrate Judge
)	Marianne B. Bowler

**CLASS PLAINTIFFS' MOTION TO STRIKE
PORTIONS OF THE DECLARATION OF ROBERT P. NAVARRO**

Pursuant to Fed. R. Civ. P. 26(a)(2)(B), Fed. R. Evid. 702, Fed. R. Civ. P. 23 and other applicable law, the class plaintiffs move this Court for an order striking certain portions of the Declaration of Robert P. Navarro filed by the Track 1 defendants in connection with the pending Motion for Class Certification. The portions of the Declaration that should be stricken include: (i) the portions in which the declarant directly or indirectly opines that class impact and/or damages cannot be established through common proof; (ii) whether differences in non-price aspects of the PBM transactions prevent proof of class impact and/or damages through common evidence; and (iii) whether certain allegations made in the AMCC are consistent with PBM practices of the four major PBMs.

In support therefor, plaintiffs state that while Mr. Navarro is experienced in managed care issues and has worked for a pharmacy benefit manager, he candidly testified at his deposition that he does not have the experience, training, education or other credentials to opine on issues relating to class certification or to the economic issues involved in establishing class impact and/or damages through common evidence. Therefore, while Mr. Navarro can reasonably provide some fact evidence regarding the practices of certain pharmacy benefit managers at particular periods of time, and while he is familiar with the mechanistic workings of pharmacy payments and reimbursements, he has no basis to testify (and did not even attempt in his declaration) to be able to credibly opine on manners or methods of common proof and/or applied economics.

In further support of this motion, the class plaintiffs submit: (i) Class Plaintiffs' Memorandum in Support of Motion to Strike Declaration of Robert P. Navarro; and (ii) Class Plaintiffs' Appendix to Class Plaintiffs' Motions to Strike Declarations of Robert P. Navarro, Steven J. Young, and Eric M. Gaier.

Rule 7.1(A)(2) Certification

Pursuant to L.R. D. Mass. 7.1(A)(2), the undersigned counsel hereby certifies that the MDL plaintiffs' class counsel have conferred with counsel for defendants in connection with this motion and have attempted in good faith to resolve or narrow the issues involved.

DATED: December 17, 2004

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CERTIFICATE OF SERVICE

I hereby certify that I, Thomas M. Sobol, an attorney, caused a true and correct copy of the foregoing **CLASS PLAINTIFFS' MOTION TO STRIKE THE DECLARATION OF ROBERT P. NAVARRO** to be electronically filed with the Court pursuant to the December 16, 2004 Order and to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on December 17, 2004 a copy to Verilaw Technologies for posting and notification to all parties.

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